1788. *Sergeant* and *J. B. M'Kean*, for the Plaintiff, ſtated, that the caſes of privilege in *England*, were limitted to an attendance upon Parliament, or upon Courts, as a party, juror, witneſs, or officer; and that all the authorities which had been cited for the Defendants, were fully comprehended within theſe bounds. They admitted that reaſonable privilege had, likewiſe, been allowed in *Pennſylvania*; but denied that, in either country, the doctrine had been extended to the object of the preſent rule. For, they inſiſted, that the *Sheriff's* attendance upon the *Executive Council*, was voluntary, in order to ſolicit an appointment, which, notwithſtanding his being on the return, the Council might, at pleaſure, grant, or refuſe. Neither was he bound to give ſecurity 'till he was appointed; and, even then, it was not neceſſary to be given in the city of *Philadelphia*.—With reſpect to the *Lieutenant* of the county, nothing, they ſaid, could be more evident, than that his viſit to *Philadelphia* was an act of ſupererogation, to perform what no law required him to do, and what might as well have been performed through the agency of a Poſt-rider.

If, indeed, the attendance of the *Sheriff*, or of the *Lieutenant* of the county had been required by the *Executive Council*; or, if they had been brought before that Board by any legal proceſs; they might then have claimed the advantage of the general rule of privilege. But there can be no pretence in reaſon, or law, to exempt from an arreſt, either a man, who voluntarily comes to ſolicit an office; or one, who undertakes a journey merely to oblige his neighbours by bringing them their commiſſions.

At an adjourned ſittings, held on the 6th of *September*, THE PRESIDENT delivered the clear, and unanimous opinion of THE COURT, that the Defendants were not protected from arreſts, for any cauſe that had been ſhewn. He obſerved, that they had not been required by the *Executive Council* to attend them, but evidently came to *Philadelphia* on their own private buſineſs; and that it was the duty of the Court to be careful not to extend the doctrine of privilege to the injury of honeſt creditors.

The rule diſcharged.

BOLTON *verſus* MARTIN.

THE Defendant was one of the members from *Bedford* county, in the State convention, which aſſembled at *Philadelphia*, to take into conſideration the adoption, or rejection, of the conſtitution propoſed for the Government of the *United States*, by the Fœderal Convention on the 17th of *September* 1787. During his attendance upon this duty, he was ſerved with a *Summons* at the ſuit of the Plaintiff; and *Sergeant* obtained a rule to ſhew cauſe, why the Proceſs ſhould not

not be quaſhed, upon a ſuggeſtion, that the Defendant, acting in this public capacity, was entitled to privilege? 1788.

The caſe was elaborately argued by *Levy* for the Plaintiff; and *Sergeant* and *Bradford* for the Defendant.

Levy repreſented the queſtion to be, ſimply, whether a member of the State Convention was protected, during the ſeſſions of that body, from being ſerved with a *Summons?* He remarked, that there appeared to be a ſtrong diſtinction between the privileges of a permanent Legiſlature, and thoſe which might be claimed by a Convention called for a temporary purpoſe: but, waving any argument ariſing from that ſource, he contended that there was no ſimilitude between the deliberative bodies of *England* and *Pennſylvania*; and that, conſequently, the privilege of Parliament in that country, was not capable of a ſtrict application in this. The *Engliſh* Conſtitution, conſiſting of three branches, was ſo conſtructed as to prevent the encroachments of one branch upon another, and privilege, as allowed in *England*, was the neceſſary reſult of that principle. The privilege of the *Houſe of Lords*, might, perhaps, be founded on immemorial uſage; but if the members of the *Houſe of Commons* had not, likewiſe, been protected from arreſts, it is eaſy to perceive, that their deliberations and deciſions might, at any time, have been interrupted by the practices of the other branches of the government. But if we muſt ſtill be refered to the privilege of Parliament, he inſiſted that the protection of a member of the *Houſe of Parliament*, extended only to the caſe of arreſts, or perſonal reſtraint, and not to the ſervice of a *Summons*. *Atk. tracts* 41. 42. 43. 1 *Mod.* 146. *S. C.* Nay, we find that anciently the Courts of Juſtice only took cognizance of the Privilege of Parliament, to deliver the party out of cuſtody, and not to abate the ſuit brought againſt him 1 *Black. Com.* 166. *Dyer* 59. 56. With reſpect to the nature of privilege, he argued, that, in modern times, it was become an odious and unpalatable doctrine; and that if it were *res nova*, a very doubtful queſtion might be made, whether the advantage which the public derives from the protection of its ſervants againſt vexatious and malicious arreſts, compenſates for the injury done by ſcreening a man from the payment of his juſt debts. The policy of Queen *Elizabeth's* obſervation, that "he was no fit ſubject to be employed in her ſervice, that was ſubject to other men's actions, leſt ſhe might be "thought to delay juſtice," * deſerves to be well conſidered in a *Republic*; and it appears, indeed, to have operated conſiderably, even in that kingdom, from which all our precedents on the ſubject are derived. Statute after ſtatute has been framed to narrow this infraction of the common law; and, by the influence of Lord *Mansfield's* eloquence, the ſtatute of the 10 *Geo.* 3. *c.* 50. ſeems at length to have placed it upon a ſafe and reaſonable foundation; for, a Peer of the moſt diſtinguiſhed rank may, at this day, be ſerved with a *Summons*, during the ſitting of Parliament. 1 *Black. Com.* 166.—But even when the pretenſions of the Commons were exalted to their greateſt height, it was always admitted that their privilege was given for the

 beneſit

* *See Co. Lit.* 131.

1788. benefit of the people at large, and not for the benefit of the individual. *Sir T. Raym.* 142. How then can the intereſt of the people be affected by a proceſs which impoſes no reſtraint upon the perſon, and occaſions no interruption of the public buſineſs?—Nor was the privilege of the Engliſh Commons ever extended by analogy to other deliberative bodies. 'Till the ſtatute of 8 *H.* 6. *c.* 1. was paſſed, in the year 1427, the members of the Convocation (which was then a deliberative Aſſembly whoſe deciſions, in matters within their juriſdiction, were taken to be law) were liable to arreſts; and to remove every doubt, whether this was merely a declaration of the ancient law, or an introduction of ſomething new, 3 *Black. Com.* 289. ſays expreſsly, that the Privilege was given by that ſtatute.

If then we are to be governed by the privilege of the *Britiſh* Parliament in determining this queſtion, are we to receive that privilege entire,—in its *duration* commencing forty days before, and continuing forty days after, the Seſſions; and in its *object* extending to the ſervant as well as to the maſter? Or, are we to receive it diveſted of its more odious trappings, and purified by the wholeſome reſtrictions of modern ſtatutes? If the latter propoſition prevails, we have ſhewn that privilege cannot protect the Defendant from the ſervice of a *Summons*; and, with reſpect to the former, though, it is true, we have adopted the municipal regulations of that nation for the ſecurity of property, and the puniſhment of crimes; yet, does it follow that we are to be encumbered with the various extravagancies of their political ſyſtem, exhibiting to the world the abſurd portrait of a *Republic*, with the heterogeneous features of a *Monarchy?* In this country an univerſal equality is eſtabliſhed; no jealous, and rival, powers, warp the legiſlature; the diſtinctions of rank and degree are unknown, except, indeed, in the honorable pre-eminence which the voice of the people periodically beſtows on the moſt worthy; and ſurely the privileges of the *Sophi* of *Perſia*, or the *Muſti* of *Conſtantinople*, are as fit to be engrafted on a conſtitution of this deſcription, as the Privilege of the *Britiſh* Peerage, or their Houſe of Commons.

But, after all, if the eſſential difference in the principles of Government, ſhould not be ſufficient to exclude the privilege contended for, the 5 *Sect. of the Art. of Confed.* which has been incorporated into the new Fœderal Syſtem, is tantamount to a ſolemn declaration, that no ſuch privilege exiſts: for, there, Congreſs, in defining the privilege of its members, ſecures them from arreſt and impriſonment, but not from the proceſs of a *Summons*. Will it, therefore, be aſſerted that the Defendant, in the preſent caſe, is entitled to greater privileges, than he would have enjoyed as a member of that honorable body? The idea is contrary to reaſon and propriety; and if we muſt argue from analogy, there can be no doubt that we ought rather to apply to *Congreſs* for the precedent, than to the Parliament of *Great Britain*.

Sergeant for the Defendant.—The exemption from arreſt in the caſe of members of Parliament, is totally unconnected with the political

litical ſyſtem of King, Lords, and Commons. It is a privilege granted for this end, that the adminiſtration of the government may not be interrupted, or damaged, by the embarraſsments ariſing from the private affairs of thoſe who are called into the public ſervice; and, as a neceſſary conſequence of this principle, it belongs to every national body, conſtitutionally aſſembled for legiſlative purpoſes. The members of the Houſe of Commons in *England* would therefore have been entitled to it, even if no King, or Houſe of Lords, had been known to their conſtitution; the Congreſs of the *United States* muſt have enjoyed it, though the Articles of Confederation had been ſilent upon the ſubject; and the ſovereigns of a free People, convened in a ſingle Houſe, are ſurely not leſs entitled to that diſtinction, than if they had only formed a third branch of the government. That the privilege is applicable to the Legiſlature of *Pennſylvania*, muſt then be acknowledged, though it certainly is not conferred by any poſitive law: Nor can it be denied to a Convention acting under the immediate ſanction and authority of the people, upon a queſtion of the higheſt importance to the general intereſts of the community. Their power, though directed to a particular object, was derived from the ſame ſource, which ſupplies the permanent Legiſlature of the State; and their buſineſs equally required a protection from vexations, interruptions, and intruſions. In ſhort, there is a ſanctity in the character of the Repreſentatives of an independent people, which is the true foundation of privilege; and it is recognized, not only for municipal purpoſes, but, by the law of nations, for the protection of Monarchs, their Ambaſſadors, and other public Miniſters; in which reſpect no poſitive ſtatute will be found to mention it, 'till the reign of Queen *Anne*. *

1788.

With reſpect to the diſtinction that is attempted, that the privilege is only from arreſts, and not from being impleaded, it can neither be ſupported by law, nor the reaſon of the caſe. The ſervice of a *Bill of Midleſex*, which is no reſtraint upon the Perſon, was held to be a breach of privilege, under circumſtances infinitely leſs important, than an attendance upon the State Convention. 2 *Stra.* 1094. In the caſe of Col. *Pilt*, the whole proceedings, upon mature conſideration, were done away; 2 *Stra.* 990. and 2 *Ld. Raym.* 1113. ſhews, that, though an original might be ſued out, and continued down, in order to avoid the ſtatute of limitations, yet the ſanctity of the perſon could not in the ſmalleſt degree, be violated. Even the caſe which has been relied on from *Atk. Tracts*, declares that he ſhall neither be arreſted, *nor impleaded*. It would, indeed, be nugatory, if an exemption from the trouble of entering ſpecial bail, was all the advantage privilege conferred; as the public ſervice would ſtill be left expoſed to the interruptions of an anxious attendance upon a litigious ſuit, and all its concomitant circumſtances, of inſtructing lawyers and collecting witneſſes.

Bradford, on the ſame ſide, arranged his argument under two propoſitions; '1*ſt*, That ſuch a thing as privilege exiſted in *Pennſylvania*;

* See 7 *Ann. c.* 12. and the hiſtory of that ſtatute in 1 *Bl. Com.* 255.

1788. *nia*; and 2*d*, That it extended to the case of a *Summons*, as well as a *Capias*.

1. He said, that where there was the same reason, there ought to be the same law; and if the purpose of privilege was to prevent a man's being drawn aside from his public duty, or embarrassed with private cares, during his attendance upon it, that fundamental principle operated, at least, with as much force in *Pennsylvania* as in *England*; and in the case of the State Convention (whose business was of the most critical nature) perhaps, more than in the case of any permanent deliberative Assembly. But, he asked, what writer has ever treated privilege as the result of a form of Government, composed of three branches? Experience contradicts the assertion. Even in *England*, a member of Parliament cannot plead his privilege against a debt due to the Crown, so superior is prerogative; the privilege which the law of nations confers upon Ambassadors, is not the result of any particular form of Government: nor does the privilege recognized in Courts of Justice, rest upon so equivocal a basis. Is a suitor here protected from arrests upon any political consideration? or, can it be said that a witness at this bar, owes his security to the texture of the constitution? No: These are the effects of an universal principle, which equally applies in all Countries, and under every modification of Government; for, when the business of the State requires the attendance of an individual at a particular place, it would be unreasonable and unjust to expose him to an inconveniency, which he would not have suffered, but for that attendance;—it would be impolitic, likewise; for few men would be willing, on such terms, to engage in the public service.

2. The preceding argument must serve, likewise, to shew, that the privilege extends to the case of a *Summons*, as well as a *Capias*. For, though the Defendant avoids the trouble of entering special bail; yet the former process, as well as the latter, will oblige him to attend the Court from which it issues, however remote it may be from his fixed place of residence. But, in the present case, the Defendant is not solicitous to be discharged from the suit, for he will engage to appear *gratis* in the proper county.

The difficulty, in fact, arises from the nature and extent of the jurisdictions of our Courts. In *England* the jurisdiction of the *King's Bench* and *Common Pleas*, being co-extensive with the kingdom, those Courts can direct the *venue* to be laid in the County where the cause of action originated. But *here*, our *County Courts* are in their nature circumscribed; and it has lately been determined in the *Supreme Court*, on a motion by Mr. *Sergeant* to change the *venue* from *Bucks* to *Philadelphia*, that, even there, this relief could not be obtained; for the act of 1766, * expressly declares, that the *venue* shall be laid in the county where the action is instituted. The Defendant's claim, therefore, is rather the privilege of being sued in a particular Court, than an exemption either from arrest, or being impleaded; and we say that he ought not to be sued in this Court,

* See 1 *State Laws* 114. *and* 552.

Court, becauſe it was the public, and not his private, buſineſs, that brought him within its juriſdiction. 1788.

By an act paſſed in the year 1684, (though ſince repealed) a ſummons might have been ſerved in any county, at any time, with an exception, allowing, in the caſe of a member of Aſſembly, a protection for the ſpace of 14 days after the ſeſſions. Shall it then be ſaid that any individual might compel a Judge of the *Supreme Court* to attend a private ſuit upon the *Ohio*, by ſerving him with a ſummons, while he is diſcharging his official duties on the *Weſtern* circuit? We contend that the intereſt of the Commonwealth requires that perſons employed in ſuch ſervices, ſhould not be incommoded; there is no neceſſity, therefore, to derive the privilege by the analogy of other caſes; it ariſes from the nature of the thing; and many authorities ſhew, that the rule is as forcible to prevent their being impleaded, as to prevent their being arreſted. 2 *Stra.* 1094. *Vin. tit. Priv.* 519. A man, by the law of *Pennſylvania*, may be his own council; if he exerciſes this right, is he not as much drawn from the public ſervice by a *Summons* as by a *Capias*? In *Matlack's* caſe, the Court would not iſſue a *Subpœna* to two members of the Aſſembly (*Delaney* and *Hill*) who were witneſſes in the cauſe; but a letter was written to the Speaker, ſtating the neceſſity of their attendance, and a vote of the Houſe was taken to allow it. In Col. *Pitt's* caſe, he was entirely diſcharged from a *Capias*, without common bail being ordered; from which it may be fairly inferred, that he ought not to have been ſued at all; as the effect of common bail, and a *Summons* are, in that reſpect, the ſame.

The caſe cited from *Pryn* in *Atk. Tr.* is not in the *Year Books*, and it could not have been within the knowledge of the writer, as it is ſaid to have happened in the reign of *Edw.* 3. For this reaſon it bears a doubtful complexion; nor, do we know that the deciſion was on the caſe before the Court; and, at all events, there is an eſſential difference in privilege, when it is extended to the ſervants (who have no public cares to claim their attention) and when it relates to the maſter.

Levy, in reply. He ſaid, that he had not aſſerted that a member, either of the Aſſembly, or Convention, was liable to *arreſt* during the ſitting of thoſe bodies; but that he had expreſsly narrowed the queſtion to this point, whether he might be ſerved with a *Summons*? Nor had he inſiſted on the idea, that the Convention was not entitled to the ſame privileges, which a permanent Legiſlature might claim; but merely ſuggeſted a diſtinction for the conſideration of the Court. He contended, however, that a member of the *Britiſh* Houſe of Lords, ſince the 10 *Geo.* 3. *c.* 50. was not entitled to the privilege claimed by the Defendant; and, he aſked, whether ſuch privileges ought to be introduced and eſtabliſhed in *Pennſylvania*, as only exiſted in the dark ages of the *Engliſh* government, and which the reaſon and juſtice of more enlightened generations had happily corrected? Finding, indeed, that they had failed in point of fact, with reſpect to the exiſtence of ſuch a Parliamentary privilege as they

1788. they claim, he ſaid, the adverſe council had entered elaborately into arguments *ab inconvenienti*. But in doing this, no anſwer had been given to the reaſon for paſſing the 8 *H.* 6. *c.* 1. by which ſtatute, the members of the Convocation, were firſt exempted from perſonal arreſt.

Where, however, is the great *inconveniency* of a ſuit, if it is not founded in malice, or inſtituted in a ſubordinate and incompetent juriſdiction? neither of which can be pretended upon this occaſion. Is there any thing more required, in its firſt ſtages, than to direct an Attorney to enter an appearance? When, indeed, the cauſe is ready for trial, at the diſtance of, perhaps, many months, and long after the buſineſs of a deliberative Aſſembly, conſtituted for ſimilar purpoſes as our State Convention, muſt be cloſed, it will be neceſſary to prepare for a defence, if there is any in the cauſe; but is this ſo ſevere a hardſhip as to diſtract a member of the Aſſembly, or Convention, in the proſecution of his duty, and to diſqualify him for the public ſervice in which he is employed?

Nothing appears to ſhew that any other county, is a more proper county than this; ſo that the offer to appear *gratis* might have been ſpared; as well as the argument reſpecting the *venue*, which is an inconveniency that extends to all caſes; is equally felt by every citizen; and, proving too much, it muſt be taken to prove nothing.

The act of 1684, has been long repealed; and the diſtinction attempted between a *Capias* and *Summons* does not apply; for every writ irregularly iſſued muſt be ſet aſide; and, therefore, if a man is illegally arreſted, common bail ought not to be ordered.

With reſpect to the inſtance of an application to the Speaker of the Aſſembly, requeſting the attendance of two members, that was in the caſe of witneſſes; and as the Court, after iſſuing a *Subpœna*, muſt have compelled obedience to it by attachment, a very ſerious queſtion, between the legiſlative and judicial authority, was prudently avoided by the ſtep then taken.

If the privilege in *England* is not the reſult of their form of government, why does it exiſt forty days before, and forty days after, the ſeſſions, in the caſe of the members for *Middleſex* and *London*, who certainly do not require ſo long a protection *eundo et redeundo*. But the whole argument ought to be determined by an analogous conſideration of the 5 *Sect. of the Art. of Confed.*

On the 6th of *September*, the PRESIDENT delivered the opinion of the Court.

SHIPPEN, *Preſident*.—The queſtion in this caſe, is, whether a member of Convention, reſiding in a diſtant county, could legally, and conſiſtently with the privileges of ſuch a deliberative Aſſembly, be arreſted, or ſerved with a Summons, or other proceſs, out of this Court, iſſued to compel his appearance to a civil action, while he remained in the city of *Philadelphia*, attending the duties of that office?

The

The members of *Convention*, elected by the people, and aſſembled for a great national purpoſe, ought to be conſidered in reaſon, and from the nature, as well as dignity, of their office, as inveſted with the ſame or equal immunities with the members of *General Aſſembly*, met in their ordinary legiſlative capacity: And in this light I ſhall conſider them. 1788.

The Aſſembly of *Pennſylvania*, being the legiſlative branch of our Government, its members are legally and inherently poſſeſſed of all ſuch privileges, as are neceſſary to enable them, with freedom and ſafety, to execute the great truſt repoſed in them by the body of the people who elected them. As this is a parliamentary truſt, we muſt neceſſarily conſider the *Law of Parliament* in that country from whence we have drawn our other laws. That part of the law of Parliament, which reſpects the privileges of its members, was principally eſtabliſhed to protect them from being moleſted by their fellow ſubjects, or oppreſſed by the power of the Crown, and to prevent their being diverted from the public buſineſs. The parliament, in general, is the ſole and excluſive judge and expoſitor of its own privileges: but, in certain caſes, it will happen, that they come neceſſarily and incidentally before the Courts of law, and then they muſt likewiſe judge upon them.

The origin of theſe privileges is ſaid by *Selden* to be as ancient as *Edward* the Confeſſor.—For a long time, however, after the conqueſt, we find very little, either in the books of Law, or Hiſtory, upon this ſubject. If there were then any regular Parliaments, their members held their privileges by a very precarious tenure. There appears, indeed, in the reigns of *Henry* the 4th and *Henry* the 6th to have been ſome proviſions made by acts of Parliament, to protect the members from illegal and violent attacks upon their perſons. In the reign of *Edward* the 4th, there has been a caſe cited to ſhew, that the Judges determined that a menial ſervant of a member of Parliament, though privileged from actual arreſt, might yet be impleaded. Although it were fairly to be inferred from the caſe, that the privilege of the ſervant was equal to the privilege of the member himſelf, yet a caſe determined at ſo early a period, when the rights and privileges of Parliament were ſo little aſcertained and defined, cannot have the ſame weight as more modern authorities.

Upon an attentive peruſal of the ſtatute of 12 & 13. *Will.* 3. *c.* 3. I think, no other authority will be wanting to ſhew what the law was upon this ſubject, before the paſſing of that act. From the whole frame of that ſtatute, it appears clearly to be the ſenſe of the Legiſlature, that, before that time, members of Parliament were privileged from arreſts, and from being ſerved with any proceſs out of the Courts of law, not only during the ſitting of Parliament, but during the receſs within the time of privilege; which was a reaſonable time *eundo & redeundo*. The deſign of this act was not to meddle with the privileges which the members enjoyed *during the ſitting of Parliament* (thoſe ſeem to have been held ſacred) but it enacts, that *after the diſſolution, or prorogation*, of Parliament, or

1788. *after adjournment* of both Houſes for above the ſpace of fourteen days, any perſon might commence and proſecute any action againſt a member of Parliament, provided the perſon of the member be not arreſted during the time of privilege. The manner of bringing the action againſt a member of the Houſe of Commons is directed to be by *Summons* and *diſtreſs infinite*, to compel a common appearance: But even this was not to be done till after the diſſolution, prorogation, or adjournment. The act further directs, that where any plaintiff ſhall by reaſon of privilege of Parliament be ſtayed from proſecuting any ſuit commenced, ſuch plaintiff ſhall not be barred by the ſtatute of limitations, or nonſuited, diſmiſſed, or his ſuit diſcontinued for want of proſecution, but ſhall, *upon the riſing of Parliament*, be at liberty to proceed. So that *before the riſing of Parliament*, and during the actual ſitting of it, it appears, not only that, generally, a ſuit could not be commenced, but, if it had been commenced before, it could not be proſecuted during that time. One exception, as to commencing the action appears to have been made by the Judges, agreeably to the ſpirit and apparent intention of the act; which is, that in order to prevent a member of Parliament from taking advantage of the ſtatute of limitations by reaſon of his privilege, *an original* might be filed againſt him; but that original muſt lie dormant during the ſitting of Parliament; no proceſs could iſſue upon it to compel an appearance; nor, till this act paſſed, could it have been done at any time after the riſing of Parliament, during the time of privilege.

This conſtruction of the act is ſo obvious, that, upon any other, almoſt all the proviſions in it would have been nugatory; and it fully accounts for the ſeeming doubt in Col. *Pitt's* caſe in *Strange*, whether he ſhould be diſcharged on common bail, or be diſcharged altogether; it being after the diſſolution of Parliament, the plaintiff had a right, by the act, to commence a ſuit againſt him; and, therefore, it ſeemed, at firſt, that he ſhould only be diſcharged on common bail; but as he had commenced his ſuit *by arreſting his perſon*, before his time of privilege expired, the Judges, that they might not ſeem to countenance the arreſt, diſcharged him entirely.

If it were poſſible to doubt of this being the true conſtruction of the act of 12 *and* 13. *W.* 3. it is made ſtill clearer by the act of 2. *and* 3. *Ann. c.* 18. which directs that any action may be commenced againſt a member of Parliament *employed in the revenue*, or other place of public truſt, even during the ſitting of Parliament, for any miſdemeanor, breach of truſt, or penalty, relating to ſuch public truſt, provided his perſon be not arreſted. This act was made for this ſingle purpoſe, and would have been likewiſe *nugatory*, if an action could have been brought before, againſt any member of Parliament during the ſitting of the Houſe.

Black. Com. 165. was cited to ſhew, that a member of Parliament might be ſued for his debts, though not arreſted, *during the ſitting of Parliament*. This will appear to be expreſsly confined to actions at the ſuit of *the King*, under a particular proviſion in the ſtatute of *W.* 3.

and,

and, by the ſtrongeſt implication, ſhews, that it could not be done at the ſuit of a private perſon. A little higher, in the ſame page, a general poſition of Judge *Blackſtone* will be found, which fully reaches the caſe in queſtion. "Neither (ſays he) can any member "of either Houſe be arreſted, or taken into cuſtody, *nor ſerved with* "*any proceſs of the Courts of Law*, nor his ſervants arreſted &c. *without* "*a breach of the privilege of Parliament.*" 1788.

In the caſe before us, the Defendant appears to have been ſerved with a *Summons* out of this Court, *during the time of the actual ſitting of the Convention.*—Whether we take the law to be, as it ſtood in *England* before, and at the time of paſſing the act of *W.* 3.; or as it ſtood after the paſſing that act down to the *10th of Geo.* 3. about ſix years before our revolution, it is clear that no member of Parliament, other than thoſe particularly excepted, could be *arreſted or ſerved with any proceſs* out of the Courts of Law, *during the ſitting of Parliament.*

We cannot but conſider our Members of Aſſembly, as they have always conſidered themſelves, intitled by law to the ſame privileges. They ought not to be diverted from the public buſineſs by law ſuits, brought againſt them during the ſitting of the Houſe; which, though not attended with the arreſt of their perſons, might yet oblige them to attend to thoſe law ſuits, and to bring witneſſes from a diſtant county, to a place whither they came, perhaps ſolely, on account of that public buſineſs.

The Defendant, therefore, muſt be diſcharged from the action.*

KUNCKLE *verſus* WYNICK.

COVENANT.—The argument aroſe upon the following caſe, ſtated for the opinion of the Court:—"*John Kunckle* on the 7th day "of *Oct.* 1784, conveyed to *Nicholas Wynick*, in fee ſimple, a lot of ground "in

* Since theſe Reports were committed to the Preſs, I have been favored with a note of another caſe in this Court, upon the queſtion of privilege; and, I hope, I ſhall be excuſed for introducing it here.

CALDWELL *verſus* BARCLAY *et al.*

Foreign Attachment.—*Moylan* obtained a rule to ſhew cauſe why this Attachment ſhould not be quaſhed, on the ground that one of the Defendant's, *Barclay*, being an *American* conſul, and in that character actually reſiding abroad in the public ſervice, was not within the deſcription of perſons, whoſe effects were made liable to a Foreign Attachment by the act of Aſſembly.

The rule was oppoſed by *Wilſon*, *Bradford*, and *Sergeant*, who contended, that as a *Conſul*, *Barclay* was not entitled, by the law of nations, to any privilege, or exemption from legal proceſs; that, even if he was privileged on account of his official character, he had loſt that advantage, by his partnerſhip with the other Defendant, who was not entitled to it; and that the act of Aſſembly makes no difference between perſons ſerving their country abroad, and any other non-reſidents.

After an able argument, the opinion of the Court was delivered by Mr. *Preſident*, SEIPPEN; agreeably to which

The rule was diſcharged.